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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO
---oOo---

LESLEY WHITELEY and LEONARD WHITELEY,

Plaintiffs,
vs. No. 303184
RAYBESTOS-MANHATTAN, et al.,
Defendants.
_____/

DEPOSITION OF
DELAVAN GARST

_____

THURSDAY, FEBRUARY 17, 2000

Reported By: MARJORIE FORMAN, CSR #2783
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00002

I N D E X

EXAMINATION BY: PAGE
MR. BROWN: 4

00003

A P P E A R A N C E S

Law Offices of Wartnick, Chaber, Harowitz, Smith & Tigerman, 101 California Street, Suite 2200, San Francisco, ROBERT BROWN, Attorney at Law, appeared as counsel on behalf of the Plaintiffs.

http://legacy.library.ucsf.edu/tid/fnt05a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/qxxd0001

Shook, Hardy & Bacon, One Market Street, Steuart Tower, Ninth Floor, San Francisco, California 94105, represented by MORDECAI D. BOONE, Attorney at Law, appeared as counsel on behalf of the Defendant, Philip Morris, Incorporated.

00004

BE IT REMEMBERED that on Thursday, February 14, 2000, at the hour of 9:35 a.m., at the Shook, Hardy & Bacon, One Market Plaza, Steuart Street Tower, Ninth Floor, San Francisco, California, Forman, before me, Marjorie Forman, a Certified Shorthand Reporter, duly authorized to administer oaths pursuant to Section 2093 (b) of the California Code of Civil Procedure, personally appeared,

DELAVAN GARST,

Called as a witness by the Plaintiff, having been first duly sworn, was examined and testified as is hereinafter set forth:

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EXAMINATION BY MR. BROWN

MR. BROWN: Q. Mr. Garst, isn't it?

A. Yes. Del.

Q. Del. Okay. Delavan, is it?

A. Well, birth name is Delavan, but I go by "Del."

Q. Okay. Let me ask the normal first question.

Will you state your full name for the record please?

A. Okay. Delavan Charles Garst.

Q. Okay. And I understand that you were a Teacher/Administrator at, let's see, Nordhoff High School?

A. That's correct. Ojai Unified School District.

Q. That's in Ojai?

00005

A. Yes.

Q. And when did you first go there.

A. I started with had the Ojai Unified School District in 1964.

Q. And when was the last you were there continuously until you left?

A. Thirty years.

Q. Okay.

A. I retired in '94.

Q. Now, do you know Leslie Whiteley?

A. The name does not ring a bell. And I have not seen a picture of her, so I don't know.

Q. You are not sure?

A. No.

Q. Okay.

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A. Our student body usually ran about between a thousand and 1250.

The first year and a half that I was in Administration, I worked with the entire student body and -- and then after about a year and a half they brought in another assistant principal, and she worked with the ladies and I worked with the young men.

Q. Is that Susan Arce?

A. That's correct.

Q. When you first went there, you were already in

00006

Administration?

A. No. I started as science teacher. I was teaching ninth grade general science at the time.

Q. General science course, huh?

A. Uh-huh.

Q. What does that include?

A. You get a -- a smattering of the life sciences and physical sciences, a little bit of -- of everything.

Q. At the ninth grade level?

A. That was the ninth grade level, that's correct.

Q. Probably like tenth grade biology I got in Pasadena.

A. In fact, that was tenth grade, is when we have biology.

Q. Okay. By 1973, were you teaching?

A. No. I went into Administration in '72.

Q. And you stayed there through?

A. '80 -- through 1980.

Q. Okay. So Administration you were, what, then, in '73? You probably just said it and it went by me.

A. Dean of Students was the title.

Q. Dean of Students or Dean of Boys?

A. Dean of Students that particular year, because I was by myself. And then after a year and a half Mrs. Arce came onto the scene.

00007

Q. Okay. You did say that and I just didn't register. It's still too early.

So that would have been '74 she came?

A. Yes. Maybe a half year before '74, because the school year is usually like '73-74, '74-'75.

Q. Well, maybe you could figure it out for us.

Were you the Dean of Students for a full school year?

A. Year and a half, I believe, my recollection, before she came on.

Q. And she took the second semester?

A. That's what I believe.

Q. And so when you say you were Dean of Students in '73, is that the '72-'73 or '73-'74 year?

A. All of the '72-'73, half of '73-'74, as near as I can recollect.

Q. Did you look at any documents to help your memory on these dates?

A. I looked to see when I earned my Master's degree, because when I started Administration I had enough units to qualify for a partial credential in Administration, which meant I had to go back and complete a credential.

So I went to Cal Luthern University to finish, and I finished in '74.

Q. So it sounds like Susan Arce came in in 1974,

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spring semester?
A. That's what I think.
Q. Okay. And then she took Dean of Girls and you became Dean of Boys?
A. Uh-huh.
Q. All right.
A. There was some overlap. If I was tied up with something and some young men were having some problems she might handle them, and vice versa. If she was tied up and some young ladies were having some problems, I might handle them.
So there was some crossover, but not much.
Q. Okay. How did you first -- how were you first contacted by the defendants in this case?
MR. BOONE: Objection.
MR. BROWN: Q. The defendants are Philip Morris and R.J. Reynolds Company. How were you first contacted by them or their representatives?
A. Okay. We returned from our vacation, and I was out in the yard working and two gentlemen came up, introduced themselves and I -- I do not know the gentlemens' name.
Do you?
MR. BOONE: No, I don't.
THE WITNESS: Okay.

00009

MR. BROWN: Q. Did they tell you who they represented?
A. They told me what the case was about, or about the case.
Q. Okay. Best you can recall, tell me what they said.
A. They wanted to know if I -- oh, geez. What did they say. If I knew the defendant --
Q. You mean defendant or plaintiff?
A. Plaintiff. Plaintiff. Okay.
Q. If you knew Leslie Whiteley?
A. Yes. And what type of instruction in tobacco was done at the high school. And that was essentially it.
I mean -- and there was some chit chat in between, some small talk.
Q. Did they say they were investigators?
A. Fact-finders, more or less, which I would assume is the same as an investigator.
Q. Did they say "fact-finders"?
A. I don't know, sir.
Q. Did they give you the name of the company they worked for?
A. They probably did, just like they gave me their name, and I can't even remember their name. The one gentleman gave me his card.

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Q. Do you still have it?
A. It's probably home, yes. Probably still do.
Q. Okay. Have you been told when you are going to testify?
A. Probably this afternoon or tomorrow.
Q. Okay. The way this trial is going, this is probably the best estimate they can give you. All right.
Was a -- there was a course at -- at the high school in the '73-'76 time frame -- let's see -- that combined, I guess, driver's ed with something called GRS, is that right?

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MR. BOONE: I'd just like to state for the record that plaintiff's counsel is reading from some document, I'm not sure exactly what that is. Do you wish to mark that as an exhibit?
MR. BROWN: No.
MR. BOONE: Okay. I'd just like to have that noted for the record then.
MR. BROWN: That sounds fair. Just --
MR. BOONE: I just would like to note that.
MR. BROWN: Q. In any case, my question was: There was some class offered, '73 to '76, that was a combination of driver's ed and GSR? And I don't know what GSR is.
Q. General State Requirement.

00011

A. Now, may I give some background?
Q. Sure.
A. I also was graduated from Nordoff High School in '57.
The kinds of things we are talking about now, tobacco, alcohol, drugs, first aid, nutrition, that kinds of things, were disbursed out throughout the curriculum, like physical education. That's where we got our first aid.
The coaches would tell us, you know, tobacco is not good, et cetera, it inhibits the oxygen, carbon dioxide exchange. It's not good for you. You shouldn't be smoking; and likewise with the alcohol, et cetera.
Coming to your point now, in '72-'73, the driver education was an 18-week course, one semester.
Q. I didn't hear the first part.
A. One semester, 18 weeks.
Q. Okay.
A. The latter part -- the last week and a half or two was devoted to sex education. They had not incorporated or drawn together all those kind of loose ends, the tobacco the first aid, et cetera.
Starting in 1980 -- and that's when I went back into the classroom, they took half of the driver ed time and devoted it to the State requirements, first aid, careers, alcohol, tobacco and other drugs, sex education. And those

00012

were divided into maybe two weeks here, three weeks there, one week here, et cetera.
So we cut driver ed in half, basically and -- and brought together all the other things under -- into a course.
Q. Did GSR, General State Requirements, just refer to this -- for lack of a better word -- I'll call it a "health class"?
A. Well, careers wouldn't be called health, but that was part of the -- part of the State requirement, it was within that framework.
Q. Quarter?
A. Or that quarter, yes.
Q. That's what I really meant then.
Does GSR just really refer to this course you have been describing?
A. Things the State said we should do.
Q. In that one course -- I mean, I am wondering if GSR applies to everything in that curriculum?
A. No. It was just the one course.
Q. Was there a GSR in '73 to '76 for this?
A. No. It was not -- my knowledge, it was not called

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"GSR" at that time. In 1980, that's when everything came together.
Q. Okay.

A. Prior to that time, it was kind of disbursed out into the science classes, et cetera.
For example, when I taught general science, when we did the human -- the systems -- when we did the nervous system, that's when we talked about alcohol, because it affects the nervous system in the brain.
When we talked about the respiratory system, that's when we talk about tobacco and the problems that tobacco can cause.
When we talked -- the digestive system, that's when we talked about nutrition.
And this was done essentially in -- in life science, biology and general science. Those were the three areas that we would discuss that.
Q. Was a tobacco subject taught anywhere except in your general science class?
A. Well, the life science class.
Q. Is that what they are called life science?
A. Well, there's three different classes. A freshman might take general science and they did okay, and they liked science, they might take life science; or if they were not a real sharp kid, they may elect to take the life science as opposed to biology.
Q. Okay. Now, did you teach all?
A. I taught life science, general science and earth

science. Those are my science classes.
Q. And which one of those did you say something about tobacco?
A. General science, life science.
Earth science didn't lend itself to that.
Q. So you are talking about ninth and tenth grade?
A. Primarily. Every now and then you'd get a junior or a senior in life science, but mostly ninth and tenth graders.
Q. Do you know if Leslie Walker -- Walker -- do you know if Leslie Whiteley took either general science or life science from you?
A. I do not know that --
Q. Well, she would --
MR. BOONE: Object --
THE WITNESS: -- because I was in Administration at that time.
MR. BOONE: Let me just object for the record, that there is no question pending at the time.
MR. BROWN: That's all right.
MR. BOONE: I just want to state that for the record, and then --
MR. BROWN: Q. You can speak any time you want. He doesn't mind, either. He is just making his objection.
MR. BOONE: I just want to object. There was no

objection pending.
Did you get his answer?
MR. BROWN: Yeah. And it was very helpful. I had my years mixed up.
Q. You didn't teach any of those science courses '72 through '76.
A. There was one year that the Administrators had to

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teach a class.
I taught earth science for one year.
They wanted to make sure that the Administrators kept in touch, the teachers and the young people, so we were required to teach a class.
The class that I elected to teach was earth science.
Q. Was earth science?
A. That's correct. Which would not involve what we are talking about.
Q. Okay. Brought altogether in a paragraph. You went to school at Nordhoff and you came to that school as a teacher initially in 1964?
A. That's correct.
Q. And from 1957, when you were a student, through 1980, whatever was taught about tobacco was taught in general science and life science?
A. Well, I can't say from '57 to '64 because I was in

00016

college.
Q. Okay. That is fair.
But when you were there from -- didn't you say from '64?
A. '64.
Q. From '64 to 1980, to the extent anything was said about tobacco, it would be handled by the science teacher who was teaching general science and life science?
MR. BOONE: To his knowledge, in terms that there was no other classes taking --
MR. BROWN: Yeah. To your knowledge.
MR. BOONE: Is that the question, that there were absolutely no other classes?
MR. BROWN: He's afraid it might appear it never happened at all.
THE WITNESS: The coaches may have mentioned that, also.
MR. BROWN: Q. Okay. That's just something that may have happened. You never went to a coach's lecture and heard what they said --
A. Well, I played sports there, and we were told by the coaches. So when I attended -- yes, the coaches told us tobacco was not good for you.
Q. Okay. Let's get up to 1973 through '76. By this time were you no longer teaching the two science classes in

00017

which tobacco was mentioned?
A. That's correct.
MR. BOONE: Objection. Misstates testimony.
MR. BROWN: I don't think so.
Q. Didn't I state it correctly?
A. Say it again, please.
Q. By the time 1973 came around, you were in Administration, and in '73, '74, '75, '76, you did not teach the two science courses in which tobacco was mentioned?
MR. BOONE: Objection.
You can answer.
MR. BROWN: Q. Go ahead.
A. I believe that's correct.
Q. That's correct. I guess I should ask you. Are you being represented by Mr. Mordecai at this deposition?
MR. BOONE: My name is Mordecai Boone, not --
MR. BROWN: I mean by Mr. Boone. I'm sorry. I'm sorry.

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THE WITNESS: What was your question again, sir?
MR. BROWN: Q. Are you being represented by Mordecai Boone?
A. I don't know what you mean by "being represented."
Q. He is not acting as your attorney?
A. I don't have an attorney, I don't think, do I?
MR. BOONE: Let me just state for the record I'm

00018

Mordecai Boone, I represent Philip Morris, Incorporated, and I do not represent Mr. Garst.
MR. BROWN: And I apologize, Mordecai. I know what your name is.
MR. BOONE: That's --
MR. BROWN: I use the wrong first name to one of my sons, so it happens.
MR. BOONE: Okay.
MR. BROWN: Okay. I think I've got that straight.
Q. You did teach a science course one year in the '6 -- excuse me -- the '73 to '76 time frame, but that wasn't a course where they dealt with tobacco?
A. That's correct.
Q. Okay. Now, was there -- was there an -- I don't want to say a formal policy or a rule, I don't want to make it that strict.
But was the policy of the school, formal or informal, that during '73 and '76, tobacco would be mentioned only by the science teacher?
A. Not only by. I mean, other teachers may -- may have said something, but it was in the curriculum to be taught there.
Q. Okay. So the curriculum required to be taught in the science course --
A. Yes.

00019

Q. Maybe both science courses?
A. Yes.
Q. General and life sciences?
A. Three. And biology.
Q. And biology. Okay.
And so what you are saying is that other teachers might have said something about it?
A. Sure.
Q. They weren't restricted?
A. No.
Q. And coaches might have done that?
A. Most likely.
Q. Let's take the science courses you taught, and let me make sure I get the years right.
When did you start -- you started teaching in science right around when you came in '64?
A. '64.
Q. So '64 to -- through to '72 you taught science?
A. Yes.
Q. It's somewhat misleading in school years to talk about one year. So I guess you did you come to work there as a teacher in '64-'65?
A. Yes. In fact, I had finished my student teaching there for about six weeks. I was student teaching at San Jose at the time, and I had gone down briefly and talked

00020

with them, and then they contacted my supervisor and asked if I could come down and take over for a science teacher who was having a kidney transplant.

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So I finished my student teaching down there, and then the following year they hired me as a teacher.
Q. And would that be '64-'65-- '64-'65?
A. Uh-huh.
Q. So your last year of a teacher, would that have been in '72-'73 or '73-'72?
A. '72. I went into Administration; but then again, in '80 I went back to teaching, so it wasn't the last year I was teaching.
Q. I was asking you to identify the school year.
'72-'73, you went into Administration?
A. Yes.
Q. In the first semester?
A. Yes.
Q. Okay.
A. As close as I can remember.
Q. Sure. But you understand if you don't use school years --
A. Yes.
Q. -- the two years, then it's hard to say really when you are talking about.
Now, in '64, did you have written materials on

00021

tobacco?
A. Some.
Q. Now, Who provided these in '64?
A. The county had some materials you could order, but they were limited the Heart Association, The Lung Association. These were all areas where we could glean material from.
Q. I take it you did?
A. As best we could.
MR. BOONE: I take it you are asking about his role as a teacher?
MR. BROWN: Yes.
Q. You did?
A. Yes.
However, from the '50s up until the mid '60s -- there was not a lot of information available in the mid '60s when the Surgeon General came out with his report, from that point on materials became more prevalent.
For example, today there's all kinds of materials out there, all kinds of programs out there.
So it was a progressive increase as to the availability of materials.
Q. Well, let's take from '50s up until the Surgeon General report. In what year did you think that was issued, that first one?

00022

A. I believe it was in '64. I believe. I'm not positive.
MR. BOONE: You are referring to the Surgeon General report on tobacco and health?
MR. BROWN: Yes.
Q. Did you ever use any materials from it in your classes?
MR. BOONE: Objection as to time.
MR. BROWN: Q. After '64.
A. I don't know, sir.
Q. Did you ever use any Surgeon General report material --
A. I don't know if it was directly from that particular office or not.

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Q. You mean you had materials, but you don't know if it was part of the Surgeon General's report?
A. That's correct.
Q. We are stepping on each other, we are both doing it.
A. Okay.
Q. And pretty soon she loses her patience and we are both in big trouble?
MR. BOONE: I'm guilty of it too, so ...
MR. BROWN: Q. Do you remember what the warning was in 1964, the label?

00023

MR. BOONE: Objection. Are you referring to the cigarette warning label?
MR. BROWN: Yes.
THE WITNESS: Other than it's hazardous to your health, that's -- that's all I can recall.
MR. BROWN: Q. Let me refresh your memory as to what it said. It said it "might be hazardous to your health"?
A. Oh.
Q. Does that sound accurate to you?
MR. BOONE: If you know.
THE WITNESS: It may.
MR. BROWN: Q. Well, we --
A. That sounds reasonable.
MR. BROWN: I think we can stipulate that's what it said 1964, "it may be hazardous to your health." Isn't that right?
MR. BOONE: I don't believe the warning labels came out until '66.
MR. BROWN: You are right. The first label was 1966, and it said it "may be hazardous to your health," right?
MR. BOONE: I can't -- I am not really sure what the exact wording was. I think "it may be dangerous to your health," but I don't want to stipulate to that.

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MR. BROWN: Okay.
Q. In any case, the word hazardous was in there?
MR. BOONE: Objection.
MR. BROWN: Whether it said it is or may.
So let me ask you this: With respect to the '66 labels, when you taught your science course, did you point out the labels?
A. I can't recall, sir.
Q. Did you discuss the language which said it may be hazardous, or whatever the words were -- hazardous, with your students?
A. Yes.
Q. What did you think "hazardous" meant?
A. Health problems down the road.
Q. Were they ill-defined or vague in your mind as to what they might be?
A. Well, probably emphysema, lung cancer, heart disease.
Q. Did you have materials from the Surgeon General that said lung cancer?
A. I can't recall that for sure, sir.
Q. What did you tell your students between 1964 and when you no longer taught that course -- courses about tobacco?
MR. BOONE: Could you -- just objection. Could

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00025
you put years on it, please?
MR. BROWN: I thought I did.
Q. From 1964, until you no longer taught those two science courses, what did you tell your students?
A. Other than the fact what we just -- just said, it was a health hazard, an irritation to the respiratory tract, to the lungs themselves, the air sacks, constriction of the arteries, increased heart rate.
Now, where did I get information? I -- I can't --
Q. I didn't ask that, not yet.
A. Okay.
Q. Anything else you told them?
A. I'm sure I did, but I don't recall. That's been quite a while ago.
Q. And then the next time you taught kids anything about tobacco, it would have been in 1980?
A. '80.
Q. Did you ever monitor a science course where tobacco was being taught?
A. The County offered work shops.
Q. How about where the science teacher was teaching the students?
A. I beg your pardon, sir?
Q. Where the science teacher was teaching the students in a high school, did you ever monitor a class like
00026
that?
MR. BOONE: Objection to the word "monitor." Vague.
MR. BROWN: Q. Do you know what I mean?
MR. BOONE: If you understand the question you can answer it.
MR. BROWN: Q. You don't have to look at him for permission to do anything. If I ask you a question, you can just answer openly and freely.
A. Okay. Restate your question please.
Q. Did you ever monitor a class at Nordhoff where the science teacher was teaching about tobacco?
MR. BOONE: And just let me state my objection. I object to that terminology. I think it's vague. If Mr. Garst understands the question, he can answer.
THE WITNESS: Monitor in the classroom per se, no.
The way -- the physical setup of the science wing, there was a common hallway in between all the classes. Each instructor had one period per day where they did prep work.
You could be in the back sitting in a desk, the biology door might be open, the general science door might be open, and you would hear a lecture going on. Okay? Now, is that monitoring.
MR. BROWN: Q. No.
A. Probably not monitoring, but you may hear.
00027
Q. Okay. Well, do you recall ever overhearing something you can specifically recall, and tell us about where some teacher was talking to their students about tobacco?
A. Not specifically, no.
MR. BOONE: Objection as to time.
MR. BROWN: Q. Can you recall anything generally that you overheard in the '72 to 1980 time frame where a teacher was talking to a -- or teaching a class about tobacco?

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A. My particular job classification did not require me to monitor teachers.
Q. Okay.
A. There were Administrators that would go into classrooms and view teachers.
Q. Okay.
A. I -- I did strictly discipline.
Q. So your answer would be you never overheard any teacher, from the time you became an Administrator until you became a teacher again, talking to their students about tobacco?
MR. BOONE: Objection. Misstates testimony.
MR. BROWN: Q. Is that right?
A. I may have or I may not have. I didn't take notes on those kinds of things.

00028

Q. So you may have overheard it --
A. Or may not have.
Q. -- or may not have. And if you did, you don't recall what you heard?
A. No. Because it was not of a consequence at the time.
Q. Okay. The way I asked the question your "no" may not have been what you meant.
Is it correct to say you did not overhear anything said by a teacher to students in a class in which they were teaching about tobacco?
MR. BOONE: Objection. Misstates testimony.
THE WITNESS: I may have heard it, but I don't recall hearing it.
MR. BROWN: Q. And if you did --
A. I just don't recall hearing it.
Q. And he said I misstated your testimony. Is that right? Did I say something -- did I suggest something you didn't testify to?
A. Now you are confusing me. I don't know how he got into it.
Q. I don't, either. I don't know, either.
MR. BOONE: I am just -- I just need to state my objection for the record. And please just answer after I am done with my objection.

00029

MR. BROWN: Q. Let me explain something a little bit about the rules.
Have you ever had your deposition taken?
A. Never.
Q. Well, just sort of a general rule is that I will ask questions. To preserve his record, he'll make objections. The objections might be completely meritorious, they might be complete foolishness, or they might fall somewhere in the middle.
And as an witness, you don't need to pay any attention to it at all, because this is -- his objections are for something that will happen later.
A. Okay.
Q. And if I ask you a question and he objects, you can -- sort you have been sort of looking over to him like you need permission to do something. You don't need to. You can answer these questions any way you want.
A. I understand --
MR. BOONE: Let me just object to the characterization. I don't believe Mr. Garst was looking over to me to answer. He was just letting me finish my

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objection for the record.
THE WITNESS: That's what I was going to say.
MR. BOONE: More out of politeness.
THE WITNESS: It's like I glanced at her on

00030

occasion, I look at you sometimes, and I look at sometimes --
MR. BOONE: I'll just say my objections singly, and then you can finish your answer.
MR. BROWN: Sure.
Q. And the way you both just described it, I'm sure that's correct.
What I noticed was that you didn't -- you hesitated, looked over at Mr. Boone, and then when he said something, you came back and you answered. So I don't know what your motive was, or what you were thinking, of course --
A. Okay. Well, I have no motives.
Q. Okay. Let's see if we've got it straight so far. You taught courses in science, '64 through -- I thought I had the school year down here. You taught the science courses, school year '64-'65 through '72-'73, in which tobacco was a required subject.
A. Okay. Well, I started as Administrator in '72, I believe, so there may -- there may be a year in there that --
Q. Might have been a year earlier?
A. Yes.
Q. Might have been '64-'65 to '71-'72?
A. Yes.

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Q. Okay. And during that time, the curriculum required -- only required in that high school, you to teach tobacco in those three science courses?
A. When you say "only" --
MR. BOONE: Object.
THE WITNESS: What do you mean by "only required"?
MR. BROWN: Q. The curriculum only required you to teach the tobacco subject.
MR. BOONE: Object.
MR. BROWN: Q. Because you were teaching those three science --
MR. BOONE: Objection. Misstates testimony.
THE WITNESS: Well, that was in the curriculum to teach that in those -- in those three classes.
MR. BROWN: Q. But as I understood it, there was no curriculum requirement in any other course, although a teacher might have said something about it?
A. As far as I know, you are correct.
Q. Okay. And you've told me everything you can recall about what you told your students in that --
A. In that frame. It became more extensive from '80 up until my retirement.
Q. From 18980 on?
A. Yes. Because more materials were available.
Q. Sure.

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A. And -- okay.
Q. Would the General State Requirements require you to say anything in particular about tobacco?
MR. BOONE: I'll just object as to time.
MR. BROWN: Q. Let's --
A. Other than --

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Q. I'm sorry. Let me just stick to the -- the time that Leslie Whiteley was a student at the high school, and I might be off a little bit, but let's assume that's '72-'73 through '75-'76. Okay?

So these are the -- that's the period of time I am asking these questions about.

In that period of time, did you -- GSR, General State Requirements, have any specific requirements of what had to be taught regarding tobacco?

A. It was a health hazard.

Q. So that sounds like it required you to teach -- to tell the students it was a health hazard, is that right?

A. Yes.

Q. Did it require them to say anything more specific than that?

A. Well, you would certainly expand on a health hazard.

Q. Well, I know. But I am not asking for what you or other teachers might have done. I am asking about the

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written General State Requirements.

A. I do not know word for word what the written State Requirement said.

Q. Can you give me any of the written State Requirements?

A. None.

Q. So that's -- all out of your memory, you don't remember those kind of details?

A. No.

Q. Some lawyers give a two and a half hour lectures about what depositions are.

One of the things they always say is you have to answer an audibly, "yes" or "no," or whatever your answer is?

A. I understand.

Q. They also say "don't step on each other." If you don't say that, pretty soon the Reporter says that, right? She's nodding immediately.

Some thoughts or some questions about your beliefs now, and I am talking same time period, '72-'73 school year -- if I hadn't had a case recently where the school years were important, I wouldn't be so meticulous about this, but I feel like I have to be.

'72-'73 to '75-'76. Okay. During that period of time, did you have at all times during that period,

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essentially the same general understanding and opinions about tobacco?

A. Yes, sir.

Q. And what was the source of those opinions?

A. Well, from what I had taught previously.

Q. I'm sorry?

A. From what -- what I taught previously to the young people.

Q. Well, you already had the information when you taught them. I am asking what the source of your information was.

MR. BOONE: I am going to object as to vague. Do you mean --

MR. BROWN: Well --

MR. BOONE: Because I am not sure what you are asking.

MR. BROWN: I want to be sure everybody is

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aware --
THE WITNESS: Well, I mentioned the Heart Association, Lung Association. Maybe publications from various doctors. They have those little fliers usually in their waiting room. I usually snagged those.
MR. BROWN: Q. Waiting room-type things?
A. Uh-huh.
Q. Okay. All right.

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When you were teaching the courses, did you hand out any material?
MR. BOONE: Objection as to time.
MR. BROWN: Q. Prior to your being Administrator.
A. From '64 to '72, most likely not. From '80 to '94, yes.
Q. Do you remember in the period where you did -- well -- I'm sorry.
Let's make another agreement. When we say '62 to --
A. '64, you mean?
Q. I mean, '64 to '72, we are talking about the school years -- wait a minute. I thought you may have given me different school years than I thought we talked about.
A. I believe I started in Administration in '72.
Q. '72-'73?
A. '72-'73. That's my recollection, because I finished my credential in '74, that's when I got my degree.
Q. In June?
A. I can't even tell you that. Probably it was in June. Probably it was in June, because I -- I did look that up to make sure. '74.
Q. Hope this isn't a confused record, but I think what you are telling me is, is that you started teaching in '64-'65, and your last year of teaching was '71-'72, would

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that be right?
A. In the first -- well --
Q. Last year of teaching before you became an Administrator.
A. Yes.
Q. And then you started teaching again in 1980?
A. Yes.
Go back to right before you said '72-'73. I -- I think that's where we are hung up.
Q. That's when you became Administrator?
A. '72.
Q. Okay.
A. Okay.
Q. Okay. This last little back and forth may have made it more confusing for what -- if somebody reads this.
A. Because part of the year was '71-'72, that was part of a school year.
Q. Right.
A. The next school year was '72-'73, so we are talking '72 twice.
Q. That's right.
A. Okay. I think that's where we might be getting messed up.
Q. Okay.
A. Am I correct.

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Q. This is my fault, I know. I mean, I am not blaming you for this. You are trying to straighten out my

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mess. Okay?
A. But you see my point?
Q. I do. And I just want to make sure if somebody reads this --
A. They will understand.
Q. -- they will also understand it. So let me try and repair the damage that I may have done.
Your first teaching experience at Nordhoff, which ended with your Administration, was in the school year '64-'65. And your last teaching year during that period was '71-'72, correct.
A. I would say that's a correct statement.
Q. So let's agree to call the period that we just mentioned, '64 to '72, because that's the second semester of each of those years, all right?
A. Okay.
Q. So '64 to '72 means the school years '64 '65 and 71-'72. Okay?
A. Okay. Now -- go ahead.
Q. So now we can -- without having double digits, we can talk about it.
Whenever I say the first year of Administration, I am talking about the school year '72 -- '72-'73?

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A. Yes.
Q. Now we are on the same wavelength?
A. Yes.
Q. Okay. Now, in '64 to '72, you did have some materials?
A. Some, but very few.
Q. Okay. And --
A. I had a real important one, I don't know if I should mention it to you.
Q. Sure. You should mention anything you think is important, whether I ask or not.
A. Okay. I had a real nice slide that I used, and I used that all the time. It was a slide about the size of a sheet of paper, 8 by 11, and it had two cross-sections of a lung. It showed a 20-year lung, the person had smoked for 20 years. And then the other lung was a nonsmoker's lung, and that belonged to the science department, and it would be used by any teacher within the department that wished to talk about tobacco.
Q. Did the lung have emphysema?
A. I believe it did.
Q. What did it look like, the emphysema part?
A. Well, the lung itself was -- was black, very -- very irregular and porous. It was very black.
The other lung, or slice, was -- was not pink, it

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was kind of a -- a light brown. And the kids always said, how come it's light brown and not pink?
And I'd say, well, it's because from natural pollutants that we breathe in all the time. And also it could be secondhand smoke, too, possibly.
But I used that all the time.
And then when I went into the health part, I -- I used it, also.
So I'd go over to the science lab area where they kept the materials stored, and I would take it over to my classroom, use it for my time frame, and then would I take it back.
Q. Was it a chest x-ray or a photograph of an actual

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lung specimen?
A. It looked like an actual lung specimen.
Q. And what did the emphysema look like?
A. Other than the fact what I just previously said. It was black. I think the caption said it was emphysema. It looked nasty. It's hard to describe.
Q. The disease you understood was -- depicted by the photograph, was emphysema?
A. I believe that's what the caption said.
Q. Let's go to now --
A. It was either emphysema and/or cancer. I can't recall for sure.

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Q. Okay. Now, let's go to the years '72-'73 to '75-'76, that I'll refer to as "'72-'76." Those are the years which I'll represent to you we understand Leslie Whiteley was a student there.
A. That's correct. Or I understand that.
Q. She graduated in June of 1976, is our understanding. Is that what you recall?
A. I didn't recall anything until I was told. And I -- I didn't check. They wouldn't show me her records, anyway, if I went to even ask.
Q. Who told you that she graduated '76?
A. I believe that was Ms. Mason.
Q. So you talked to some attorneys from the Shook, Hardy office, as well as these investigators?
A. Yes.
Q. And when was the conversation with Ms. Mason?
A. I can't give you an exact date. I can give you an approximate time. Maybe three -- three weeks after I talked with the two gentlemen.
Q. Which was when?
A. Okay. Probably November 9th. Probably November 9th, give or take a couple of days on each side.
Q. Okay. Did Ms. Mason ask you any questions?
A. Essentially, the same kinds of things that we are talking about right now.

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Q. Did she ask you any questions about cancer?
MR. BROWN: Hold on a second.
MR. BOONE: Can we go off the record for about two seconds?
(Discussion off the Record.)
(Record read.)
THE WITNESS: I believe she didn't ask about cancer. I don't recall, other than the fact that she said what -- the young lady did have cancer.
MR. BROWN: Q. Did you say anything to her about cancer?
A. I don't think so.
Q. So cancer wasn't mentioned at all, except she told you that Leslie Whiteley had cancer?
A. Probably so. Again, I -- I didn't tape record the session, and so I -- I can't give you word-for-word kind of stuff.
Q. Do you know if --
A. We only talked for maybe 30 minutes.
Q. What else did you talk about in that -- what did you talk about the other 29 minutes?
A. Well, kind of like chit chat, like you just dumped your coffee over. We talked, you know, like the valley, she tried to make me at ease so I wasn't uptight.

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Q. All right. As far as you know, were any of your
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interviews tape recorded?
A. No.
Q. Were there any written statements prepared that you were able to look at?
A. No.
Q. Were any notes taken by the investigator while you were --
A. No.
Q. -- observing?
A. No notes.
Q. Was your conversation with Ms. Mason on the phone?
A. No. She was -- in person.
Q. Did she take notes?
A. Just like you are doing.
Q. I didn't suggest they were nefarious to take notes, just --
A. No. They didn't.
Q. Neither there nor here. Okay.
Can you give us other subjects you talked about -- I don't know if you've given us any actually except the chit chat, but could you list for us all the subjects you talked about in that 30 minutes?
MR. BOONE: I am just going to object to "subjects." I think that's vague.
THE WITNESS: Well, we talked about the problem.
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MR. BROWN: Q. And what's that?
A. That she had cancer, and that she was involved in a -- in a suit.
And Ms. Mason wanted to know the kinds of things that we did at the high school, in terms of education of tobacco.
Q. Did she suggest any or just ask --
A. She asked.
Q. What did she ask about?
A. What kinds of things we -- you know, where it was where we taught those kinds of things.
Q. Did she ask specific questions about -- that had within it, sort of a suggestion of what you might have done, like exactly what you did; did you have a course curriculum that taught tobacco? Did she ask questions like that?
MR. BOONE: I am just going to object for the record.
THE WITNESS: She may have asked that, or I may have come out with it before she had time to ask.
MR. BROWN: Q. Did you give her any materials?
A. No materials. I told her about the slide that I used all the time. In fact, I used that slide when I was in Administration, also, because we had frequent suspensions for smoking.
Q. Okay. We'll get to that in a minute. Okay.
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Let's go back to the -- to your views, '72 to '76. What, if anything, did you understand about the relationship between tobacco and lung cancer?
MR. BOONE: I'll just object as vague, but go ahead.
THE WITNESS: Well, it was a health hazard. I didn't know much about secondhand smoke as being a health hazard at that time. I've always disliked smoking.
My parents smoke. I was always after my parents

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to quit smoking. I told them it was bad for them.
Mom said she'd quit when the doctor told her to quit. She quit too late.
MR. BROWN: Q. Did she have lung cancer?
A. She had congestive heart failure.
Q. Do you think that that was related to --
A. I believe it was.
Q. -- her smoking? When did she pass away?
A. Mom's been gone about four years.
Q. Let me ask that question again, because I think you may have a slight hearing problem, or maybe I am talking too low. I don't know. But I'm not sure you heard that question. Let me try it again.
Could you tell us what your opinions were, what your understandings were in '72 to '76 concerning tobacco as related to lung cancer.

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A. It wasn't good for you. That was my understanding.
Q. Would that be a good general description of your feelings about the health hazards of smoking, that it quote, was not good for you, unquote?
MR. BOONE: Objection to the word "feelings." I think it's vague.
THE WITNESS: I'm sure I could add to the fact that it's -- the potential problems that could develop. In other words, that you could expand on what is not good for you. Emphysema, heart disease. Those kinds of things. Lung cancer.
How do I know that? Things that I have read.
MR. BROWN: Q. Can you tell me what it was you read that told you about lung cancer, or when you read them?
A. Not specifically, sir.
Q. Do you recall that in the '72-'76 period, you thought there was some degree of risk that some amount of smoking would cause lung cancer?
A. I believe that.
Q. Did you have any view on how big the risk was?
MR. BOONE: Objection. Vague, ambiguous.
THE WITNESS: I thought it was significant enough that it warranted telling the kids not to do it.
And the kids would often come back and say, well,

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I know this 88 year old person that smokes two packs a day.
And I said, well, that person was lucky, but there's lot of people that will get it much earlier.
MR. BROWN: Q. Let me give you an analogy about how you might quantify or think about risk.
Think about jumping off your one-story garage roof onto a lawn, compared to falling out of a ten-story window. They are both falls, they both involve falling through the air and hitting the ground, but there's different risks involved. I think you'd agree to that?
A. Yes.
Q. Okay. Now, you don't have to use that analogy, you can use any analogy you want, but how did you view -- I am talking now about '72 to '76, because we all today understand it's one hell of a risk, we understand now it's --
A. I understand.
Q. -- it's jumping out of a hundred stories?
A. I understand.
Q. Okay. Let's go back to '72-76.

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MR. BOONE: Let me just object to all those questions, just as improper, it's argumentative and improper.
MR. BROWN: We can agree you can just call it the Barron objection.

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THE WITNESS: I think it would be hard to quantify that as terms -- if it was 10 being real bad, 1 being not so bad it -- it was bad, maybe a 5, you know. And today it's probably a 10.
Back in the '40 and '50s, it was probably a 1 or a 0. I don't know if that answers your questions.
MR. BROWN: Q. It does. If those were beyond just examples -- I mean, is that what you thought?
A. Yeah.
MR. BOONE: Let me make an objection. I am going to object to all the questions and all the answers as argumentative and improper and not relevant.
MR. BROWN: Q. Let me do another Barron-type speech here.
You and I are old enough so that we were adults, and we had reasonable recall of the '50s and '60s, '70s, and the '70s and '80s. As adults, in fact, by the '60s and '70s, and later, we all had had some higher education, and maybe even completed it. In your case, you completed it by middle '60s.
But for some -- and it may or may not include you, it's difficult to recall, put ourselves back in that period of time and separate what we know now --
A. I understand what you are driving at.
Q. -- from what happened there.

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A. I understand.
Q. Okay. Now, to the best of your ability, just give me this kind of general idea. Would it be accurate to say that you have a -- you have some recall of what you were thinking during that period of time -- and I am talking now about '60s and '70s, but it's a little bit vague because of the years involved --
MR. BOONE: Okay. I just want to object. Argumentative and vague.
MR. BROWN: Q. And if those words are not appropriate that I used, you know, use your own.
A. Okay. Restate the question, please.
Q. Do you have a recall, which is somewhere between vague and you remember a little bit, or is it different than that?
MR. BOONE: Same objection.
You can answer the question.
THE WITNESS: I remember I was adamant against smoking.
MR. BROWN: Q. Okay.
A. I have never smoked, and I've always thought it was a health problem.
Q. Okay. Would you say that you kind of stood out in that time period as someone who felt adamant about it, where most people didn't?

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MR. BOONE: Objection. Argumentative.
MR. BROWN: Q. "Most people," meaning the ones that you knew about.
MR. BOONE: Okay. Objection. Argumentative, relevance.

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You can answer the question, if you can.
THE WITNESS: I think it's been a learning process for our society.
MR. BROWN: Q. Sure.
A. And I think that probably during the '60s and '70s, it was a -- the society was learning the fact that it was bad for you, compared to the '40s and '50s.
Q. Okay.
A. And I believe now that they do know it's bad for them, but they still do it, some still do it.
Q. Did you have any religious views against smoking --
A. None.
Q. -- or anything like it?
A. None.
Q. Or against alcohol, for example?
A. None.
Q. Do you think your adamant feelings about the lung cancer came from your experience in your youth when you were growing up?

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A. Probably not, other than the fact the coaches said it was bad for the wind. And if you were a miler, it might knock off 10 or 15 seconds off your time. That meant something to me.
Q. Okay.
A. That was in '56, '57. And occasionally we would have an athlete that did smoke, and the coach would point out that his times are good -- or her times are good, but they'd be better if they didn't smoke.
Q. I was asking you some questions about the sources of your information.
Up through 1976, you have mentioned the Lung Association, the American Cancer Society, waiting room stuff that came from doctors. And if I missed one, help me out.
But can you think of any other materials that you had available that you read, and so which formed a basis of a source of your information about tobacco and health, up through 1976?
A. Earlier this morning I mentioned that the County had a resource center where materials could be ordered, film strips, films, things of that nature.
Q. Was that part of a school situation or was that for anybody?
A. Each district in the County would put in a certain amount of money, then the County would purchase these

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materials and then send out catalogs, and then instructors could order material from the county.
Q. So you had some tobacco materials from that County facility?
A. Yes.
Q. Were there -- were you aware of advertising for tobacco products in the '60s and '70s?
MR. BOONE: Objection. Let me object on relevance.
You can answer the question.
THE WITNESS: I used the -- the advertising. I can recall in the '80s through the '94, we would take the ads and talk about the ads, and how they -- it was always a nice setting, a mountain setting, a lake setting, on a horse, on a yacht. I can't recall from '64 to '71-'72, that we discussed advertising.

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MR. BROWN: Q. Okay. Your take in 1980 and onward about the nice setting, yachts and horses, and so forth, did you teach the concept that these ads always seemed to put the smoker in a position where that life appeared -- I'll give several adjectives here -- glamourous?
MR. BOONE: Let me just State an objection. I am going to object to argumentative, improper question, and relevance.
And can I just have a standing objection on

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advertising to relevance?
MR. BROWN: I was going to suggest --
MR. BOONE: Standing objection to --
MR. BROWN: And your standing objection can be anything you think of now, or anything you think of later, with no limitation.
MR. BOONE: Thank you.
You can answer the question.
MR. BROWN: So I'll start it over so the record reads straight.
Q. Did you teach the kids in the '80s and onward, with respect to advertising, that this nice setting you mentioned gave the impression that smoking was glamourous?
A. That would be a fair evaluation.
Q. Adventurous?
A. True.
Q. That smokers were beautiful people?
A. You could probably say that.
Q. That they were healthy?
A. They looked healthy.
Q. That they were people who did athletic things, like water skiing and snow skiing, and whatever?
A. It appeared that way.
Q. And did you note that they had -- that the tobacco people advertised sporting events so that some of their --

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their spokesmen were well-known athletes?
MR. BOONE: I am going to object to that because -- just on the dates. I don't believe that happened after 1980s, so I object to misstates evidence.
MR. BROWN: As I sit here I'm not sure either.
Q. But I am asking, were you taught?
A. That's possible.
Q. Okay. I take it you had the view, and that's why you brought it up to your kids, is that the advertising depicted all these things we just went through and so it -- it created an inducement to young people who were looking for a way to became accepted into society, sort of an inducement to smoke, because it suggested that that might be a gateway to those kind of things, like glamour, adventure, beautiful people, et cetera?
MR. BOONE: Objection.
MR. BROWN: Q. Is that your idea?
MR. BOONE: Let me just state my objection. Objection. Argumentative, misstates testimony, relevance.
You can answer if you can.
MR. BROWN: Stipulation or not, you just couldn't stand --
MR. BOONE: That one was too argumentative.
MR. BROWN: Okay.
Q. Go ahead.

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A. That would be a fair assessment, I would think.

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Q. Now, let's go back to 1962 to '7 --
A. '64?
Q. I'm sorry. I can't even get the dates right when I write them down.
'64 -- to the year you became an Administrator, during that period you didn't teach about advertising?
A. I can't recall if I did or not.
Q. Let's go to your personal views about advertising during that time period.
Did you have essentially the same view as you did after 1980, that as to what these ads were appearing to suggest to potential smokers?
A. I think --
MR. BOONE: Let me just object. Object as to -- we don't have any reference to specific ads; and again, my standing objection. Argumentative improper relevance.
Go ahead.
THE WITNESS: I'm more aware today of the ads than I was back in '64 to '72.
MR. BROWN: Q. Can you remember, however vaguely, that there were ads in the Ventura-Ojai area in '62 through 1980, that depicted smokers as glamourous?
MR. BOONE: Objection.
THE WITNESS: You are saying, did I see those kind

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of things?
MR. BROWN: Q. Right.
A. Yes.
Q. Adventurous?
A. Yes.
Q. Showing beautiful people?
A. Like we said a little while ago, yes.
Q. Suggesting wealth because they were on yachts, for example?
A. Well, I -- yes. Okay.
Q. Well, it might be a 36-foot sailboat that cost 20,000 bucks, but at least it suggested some success, is that right?
A. Yes.
Q. Okay. So you agree with that?
A. Yes.
Q. Okay. Now, in hindsight with what you know now, and looking back at what you recall actually seeing, did those ads appear to permit or -- strike that.
Did those ads, from your experience as an educator and teacher, provide some inducement to young people to start smoking?
MR. BOONE: I just want to get another objection. Standing objection, based on argumentative improper hypothetical. I think that calls for an expert conclusion

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that Mr. Garst is not qualified to make, and those are my objections. And also vague and relevance.
You can answer.
THE WITNESS: In my mind's eye, yes.
MR. BROWN: Really, you can have a standing objection for anything in the entire world. There is no limitations on it. And I'd kind of like if you could do that, I'd really appreciate it, because we can get through faster; but I know that sometimes one just can't resist, you know, I appreciate that.
Q. Okay. I want to ask you some general questions about the Ojai community.

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Is Ojai -- I don't want to make this -- overstate this, but Ojai is kind of an idyllic setting back in the '60s and '70s. Would you describe it that way?
A. Idyllic? Explain what do you mean by "idyllic"?
Q. Just kind of Norman Rockwell, you know, families, and that cared about their kids and -- and sort of a -- sort of a rural atmosphere in Ojai as opposed to Ventura. I mean, you can add your own -- how would you describe it? Forget "idyllic." How would you describe it?
A. Kind of an artsy environment, rural environment, agriculture, middle class to upper middle class.
Q. By and large, really good kids?
A. Yes.

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Q. Not withstanding that there was really good kids, was there a pot problem? A lot of smoking pot?
A. In the '60s, most schools had a problem with drugs.
Q. In the '70s, too?
A. It seemed to wane a little bit in the '70s.
Q. Okay.
A. That's how I see it.
Q. Sure. I understand.
You seemed to notice a little less pot problems, smoking marijuana in the '70s as an Administrator at the school?
A. We had some. It didn't seem to be as prevalent. And in the '60s, kids also got more sophisticated.
Q. So you weren't noticing as much because it wasn't as visible, is that what you are saying?
A. I tried to be very aware. I was on campus frequently.
Q. That sounds like some of the times you weren't. What do you mean by "on campus"? You mean out on the grounds?
A. As opposed to my office.
Q. Okay. I got it.
A. I didn't stay in the office for eight hours.
Q. And were you pretty much discipline --

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A. Strictly discipline.
Q. Okay. That's what Deans do in high school, I guess?
A. Most assistant principals do the same thing.
Q. Let's talk about this. Let's talk about tobacco -- smoking, first of all, at the school -- at the high school.
Were there a lot of kids smoking at the high school?
MR. BOONE: Objection as to time.
MR. BROWN: Q. I mean, were a lot of kids in that high school smoking? Let's put it that way.
A. When you say "a lot," are you saying 5 percent is a lot? Are you saying 20 percent is a lot.
Q. What's your recollection about -- I don't know if you can put a percentage, that's sometimes misleading, but did you have the impression that there was a considerable amount of smoking being done?
A. I wouldn't say considerable.
MR. BOONE: Can I just get an objection in? Objection as to time. I'm not sure what time frame you are referring to.
MR. BROWN: We are talking about the '60s and the

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'70s.
THE WITNESS: I wouldn't say that horrendous
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amount.
MR. BROWN: Q. And I never intended to put any words in your mouth. I want you to either accept my words or say no, it's different and, you know, tell me the different words. So you understand that?
A. Uh-huh. No. I wouldn't say it was a lot.
Q. How frequently did you have rule violations concerning smoking in the '60 -- while you were an Administrator, '72-'76?
A. Oftentimes that would depend on how aggressive I was that particular day. Oftentimes the kids did not know my schedule. I didn't want them to know my schedule.
Q. Did you feel you had the ability -- same as traffic cops, have the ability to find somebody to give a ticket to any time they want to? Did you feel that way?
A. Well, how do you mean? If I saw them smoking I would bring them in and suspend them. Are you referring to that?
Q. No. I mean, if you went looking for it, you could find it?
A. On occasion, yes. I wouldn't say a hundred percent of the time.
Q. When you said depending on how aggressive you were. What did that mean?
A. How much time I was on campus as opposed to being
00060
in the office.
Q. When kids were caught smoking, were they suspended and required to leave school?
A. Yes.
Q. How long would the suspension be?
A. One to three days, five days being a maximum suspension on any offense unless-- unless it were maybe a -- narcotics or a violent behavior, then we might have to go for a expulsion.
Q. By "smoking," I meant tobacco.
A. Yes. Now, when you say "smoking," are you talking about chewing tobacco, also?
Q. If that was within the rules, sure.
A. Yeah. Any tobacco product.
Q. Okay.
A. They didn't have to be smoking, either, just possession.
Q. Of a cigarette?
A. Of tobacco. And not only on the grounds, but within -- I forget the exact measurement now, but it was 2- to 3- or -- to 500 feet from campus.
Q. Was that a school policy, or was it a school policy and State law in the 1970s?
A. State law with the off-campus, 3- to 500 feet, whatever the distance was. I don't recall what the distance
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was.
Q. Okay.
A. But my -- my most concern was on campus. That's where my concern was.
Q. Was there a State law prohibiting smoking on campus?
A. Yes.
Q. For anybody?

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A. I -- I can't tell you no, not anybody. Staff could smoke on campus, custodians could smoke on campus.
Q. Was there a room where teachers could go to smoke?
A. There was a faculty lounge.
Q. Now, I have heard -- and I would like you to confirm or dispute it, if you will -- that there was a place where the teachers assembled to smoke, and the lounge may have been it, and if you were near the door when it opened, you could see the smoke come out. Do you recall that?
A. Yes.
Q. Were teachers allowed to smoke in the hallways of the school?
A. No.
Q. In their classrooms?
A. No.
Q. Were they allowed to smoke out on the grounds?
A. No.

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Q. So they had to go to that room to smoke?
A. That's correct.
Q. Was there a private high school in Ojai, as well, as the public high school?
A. There are many private high schools.
Q. Was there a high school where there was a room where the students were allowed to smoke and it caught fire?
A. I'm not aware of that, sir.
MR. BOONE: Bob, how much more do you have?
MR. BROWN: Not much more.
MR. BOONE: Okay.
MR. BROWN: I do have some things to show him but --
(Recess taken from 10:45 to 10:50.)
MR. BROWN: Q. On the Nordhoff girls' bathroom, was there a "Welcome to Marlboro Country" sign?
MR. BOONE: Objection as to time.
MR. BROWN: Q. In the fall of 1975.
A. I -- I don't recall that, sir.
Q. Do you recall in the school paper, which was called --
A. Ranger?
Q. Ranger?
MR. BOONE: Let me just state for the record that plaintiff's counsel is reading from what looks to be a copy

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of the Ranger.
MR. BROWN: Of the Ranger. I think you have accurately described what I am doing.
Q. Do you recall in Ranger, a note that said, "New sign on Nordhoff girls' bathroom door," quote, Welcome to Marlboro Country, unquote?
MR. BOONE: Let me just state that if he is going to read something, I think he should show it to the witness and mark it as a exhibit; with that said, you can answer.
MR. BROWN: I can appreciate there's good tactical reason, but I am going to decline to do it.
MR. BOONE: Then I am going to object to the line of the questioning.
MR. BROWN: There is an evidence code section that provides expressly I don't need to, but it doesn't matter.
Q. You don't remember that?
A. No.
Q. All right. What percentage of the teachers smoked, can you recall that in the '72 to '76 time?

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A. Similar to the question you said awhile ago, on a scale of 1 to 10, and I said a 5. It was probably approaching a 5, from 1 being everyone smoked to a 10, no one smokes.
Q. Okay.
A. So --

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Q. And this is teachers you are talking about?
A. Teachers. When I first started, a huge percentage smoked. And then as time progressed, through the 30 years we are to a point now where hardly anyone smokes.
Q. How about as of '76?
A. Geez. Percentagewise or -- faculty still did smoke in '76.
Q. Okay. Okay.
A. But certainly not all of them, and it had dropped from -- from what it was in '64.
Q. In 1975, do you recall a letter to the editor of the Ranger written by someone named Pam Snyder -- do you happen to know who Pam Snyder is?
A. No, sir.
Q. Pam Snyder wrote: "Dear editor: I would like to express my feelings about the smokers' lawn here on campus next year. Being a nonsmoker, I would like to state that it is a relief to know that every time I walk into the john I won't be hit by a wall of smoke."
First of all, do you recall a letter to that effect?
A. No --
MR. BOONE: Let me just object to the record. Again, Counsel is reading from what appears to be a document -- from a document entitled "Ranger." And we

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request that he attach that as an exhibit and show it to the deponent. So we object to this line of questioning if he does not do so.
MR. BROWN: I decline to do that.
THE WITNESS: Restate your question, please.
MR. BROWN: Q. I read a portion from a "Dear Editor" letter. I just wonder if you remember a letter like that?
A. No, I don't.
Q. That's understandable.
Did you read the letters to the editors with great care during that year?
A. I used to read the Ranger, not with great care, but I used to take an interest in what the kids did.
Q. That suggests two things to me. I'd like to see what you recall as a result. Sounds like the girls' bathroom had a lot of smoking going on inside it. Is that your recollection in the '72-'76 era?
A. Smoking occurred. I don't know if you could say "a lot," but smoking occurred in the bathroom.
Q. This lady described it as every time she went there, there was a wall of smoke. Do you recall that?
A. Since I didn't check the girls' bathroom, I wouldn't know.
Q. That was done by --

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A. Mrs. Arce.
Q. Arce, right.
A. I checked the boys' bathroom frequently.
Q. Now, the other thing it suggested was there was

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some place -- that around '75, there was a place called the "smoker's lawn" that was designated where people could smoke. Do you remember that?

A. Not legally, they wouldn't.

Q. No. But do you remember that there was sort of a -- there was a smoker's lawn where students would go to smoke?

MR. BOONE: Let me just object to facts not in evidence and relevance.

MR. BROWN: It will jump into evidence if he says "yes." This is the transition stage.

THE WITNESS: The kids would try to -- the ones that smoked would try to find an area where they would be less likely caught. Or they could get in a large group at a distance, and you may have two or three smoking in a large group, and you would know someone is smoking in the group, but it was hard to identify until you got there, and then you had to do a breath test, and then you could smell it on their breath.

MR. BROWN: Q. Now, there is another letter in this same issue, and I'll give you the date. It looks

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like -- well, it's 1975, is all I can tell you. There's another letter that read this way -- and this may refresh your recollection about a designated area, or what the policy was. So I read it only to see if it refreshes your memory, a Brenda Patton wrote it. Do you remember who that was?

A. No, sir.

Q. Okay. She starts out saying, "Should our high school designate an area on campus for the use of students who smoke? Now that the Legislature has passed a bill and Governor Brown has signed it, our school has that option starting January 1, 1976 whether or not to have a designated smoking ground."

And then she goes on to discuss pros and cons.

Do you recall considering designating a place for students to smoke starting around January 1 of 1976? Whether or not you did or not.

A. The Administration never considered establishing an area. The kids suggested establishing an area.

Q. Who is Mr. Owens? He was the principal wasn't he?

A. He was the principal.

Q. Did you ever hear expressed by students that -- and these were by nonsmokers -- that they wished there could be a designated area because they were sick of going to the bathroom and running into a smoke-filled bathroom?

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MR. BOONE: Objection as to time.

MR. BROWN: '72 to '76.

THE WITNESS: I knew the students were upset with the rest rooms.

Q. Because of the smoke?

A. Yes.

MR. BOONE: Let me just state for the record that counsel for the plaintiff is reviewing another copy of the Ranger that has not been attached as an exhibit to this deposition. The same objection to any questions from that, without attaching it as an exhibit, as well.

MR. BROWN: Q. Do you see a picture of Leslie Whiteley -- I won't ask you.

I'll try to go through these in a hurry.

There's a newspaper in town called the Ojai Valley

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News, correct?
A. Yes.
Q. And it was around, I guess in the '70s, correct?
A. (Nods head.)
Q. Here is a piece in the paper -- the paper I just mentioned -- I'd sure like to give you a date. Here it is. February the 18th, 1976. And it's entitled "Smoking formalized at Nordhoff."
It starts off saying -- asking the question, "Will Nordhoff students be given a place where they can smoke in

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peace, legally, free from fear from punishment?" And it was discussed at the Ojai School Board. Do you remember all of that?
MR. BOONE: I object on the same grounds to the Ojai Valley News that we object to on the high school newspaper Ranger, that it's not being marked as an exhibit, and questions are being formed on the basis of reading articles from the Ojai Valley News. We would ask that those be attached as a exhibits. We object.
MR. BROWN: Q. Does that refresh your memory that there was some kind of debate going on at Nordhoff -- and I'm sure I know which side you were on, and Mr. Owen's, too, I think -- there was some kind of debate going on that got clear to the School Board about whether or not there ought to be a designated smoking place for students? Do you remember that?
A. Uh-huh. Yes.
Q. And that was in 1976, thereabouts?
A. I wouldn't know the date.
Q. In the '70s?
A. Most likely, yes.
Q. Do you recall that the School Board had the legal right to decide there would be a smoking place for students, whether they would or not?
A. I didn't know that, if they could override State

00070

law.
Q. Well, I don't know what the State law was and, you know --
A. I don't know, either, other than the fact that --
Q. I'm not suggesting there was a State law one way or the other. I don't want you to be mislead, but it sounds like somebody thought so, but who can believe the newspaper. Okay.
Ken Wade, the Superintendent of the School District?
A. Yes.
Q. And he is quoted as asking the question, "They can smoke everywhere else legally. Why not on the campus?"
A. Say it again, sir.
Q. "They can smoke everywhere else legally. Why not on the campus?"
now, it's not real clear to me he is talking about students or administrators, but it seems to me like he is talking about both; but do you remember Ken Wade taking this position, that at least we ought to do it?
MR. BOONE: Let me just -- objection again. I'm not sure what you are reading from, and I am not sure -- it's hearsay, and I don't think it's clear what that statement is referring to. And again, I would ask you to show the article to the witness so that he can answer that

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question.
MR. BROWN: You can have a continuing objection on that, because due to circumstances of the way this deposition had to be taken, I am not going to permit you any discovery.
We had to go argue for the right to take a deposition, and then you did agree to it, I will make the record clear on that; but initially when we found out this witness was going to be here, we were met with some resistance, and I am not doing anything more here than trying to refresh memory. If these are relevant later on when he testifies, trust me, they will be marked and you will see them, and you will have an opportunity to look at them before they go into evidence, if they do. Okay.
Q. Do you recall Ken Wade saying, "Why don't we try it for a few months," that is, giving students and administrators a place to smoke on school the grounds?
MR. BOONE: Objection. Facts not in evidence, out of context.
MR. BROWN: Q. Do you recall that?
A. No, I do not.
Q. Okay. Do you recall the argument being made by those in favor of a place for students to smoke on campus, that studies had shown that when you have a place to smoke on campus, fewer students smoke?

00072

MR. BOONE: Same objection.
THE WITNESS: I hadn't heard that, sir.
MR. BROWN: Q. Here is a reference that is kind of -- maybe this will refresh your memory. This apparently wasn't a legal place or a permitted place, but there's a reference made to quote, the well-known tree.
Was there a well-known tree where the students went to smoke, that you remember?
A. There was an oak tree on the front lawn that may have been the reference point, but that's only speculation on my part.
Q. Okay. Sure. Well, in any event, the designated smoking place never came to be, as far as you remember?
A. It never came.
Q. But do you remember there was a debate about it --
A. Yes.
Q. -- that got as high as the School Board?
A. Yes.
Q. Okay. More information. In March of 1976, headline says "Board Refuses to Allow Smoking at Nordhoff." Do you remember that?
MR. BOONE: Same objection.
THE WITNESS: Probably at the time I do. I don't -- I don't recall that now.
MR. BROWN: Q. Okay. There is also a paper

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called the Ventura Star Press that had circulation in the Ojai area?
A. Yes.
Q. Do you recall being aware of any government agencies, other than specifically the Surgeon General in the '60s, making a public statement about the health risks of smoking --
MR. BOONE: Vague as to --
Q. -- other than the Surgeon General?
MR. BOONE: Objection. Vague as to "government agencies." What level of government.

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MR. BROWN: Any level of government. Any government.
THE WITNESS: No, sir.
MR. BROWN: Q. You don't? Okay.
Did you live down in that area -- yeah, you did. You lived in the -- you were going to high school and graduated in '57 from Nordhoff, right?
A. Yes.
Q. So I take it you lived in Ojai?
A. Yes.
Q. Do you recall starting as early as 1954 and continuing up through the '60s and '70s and '80s, reading or hearing on radio or TV, statements that were attributable to the tobacco industry which denied that smoking created

00074

health risks?
MR. BOONE: Objection. Facts not in evidence, argumentative.
You can answer.
MR. BROWN: Well, I can tell you that I put documents in evidence yesterday that said exactly that, Counsel, and they were read to the jury and it's in evidence. And -- trust me, it's there, but it's -- anyway --
MR. BOONE: I still object.
THE WITNESS: So you are saying the tobacco industry was saying it was not good or it was of no consequence?
MR. BROWN: Q. I don't need you to prove they were doing it.
What I am asking is whether, living in Ojai in the 1950s, high school, and then afterwards in the '60s and '70s and '80s and '90s, any time in there, do you recall seeing quotes attributable to the tobacco industry, tobacco institute companies, whatever, in which there was a statement to the effect that, for example, there's a big controversy about whether smoking causes lung cancer or other serious diseases, or straight-out denials it doesn't cause lung cancer or other serious diseases? Do you recall anything like that?

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MR. BOONE: Let me just state for the record same objection I had previously.
THE WITNESS: Controversy, and then most recently denial.
MR. BROWN: Q. You don't recall denial in the '50s, 60s and '70s?
A. I don't recall that.
Q. Okay.
A. Just the controversy.
And I would assume the controversy had something to do with denial, or else you wouldn't have a controversy.
Q. That's right. Just so I -- you understand our contention at the trial is there was no controversy, that was a lie, but -- I just wanted you to --
MR. BOONE: Well, there's two sides in everything in the trial.
MR. BROWN: Q. Do you remember -- let's see -- some time in the '60s -- or actually, in the '70s, reading that low tar, low nicotine cigarettes which were then available, had become available, were less hazardous than the regular cigarette that had the full strength?
A. I heard that.

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Q. Okay. Did you take the -- or read the Ventura Star Free Press?
A. We take the Star.

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Q. Did you take it in the '70s?
A. I believe we did.
Q. Do you recall an article where the effect of the article was that smokers death rate cut by low tar and low nicotine, in that paper?
A. I don't recall that article, sir.
Q. Do you recall ever seeing a reference to the Tabacco Institute?
MR. BOONE: Let me just object that you are again reading from newspapers, and I just want to have the same objections that I have had to all your questions from newspapers that have not been disclosed to the witness.
MR. BROWN: Q. We may show this to you at the trial. We may ask if it helps you, but I am just wondering, without seeing it, you --
A. I don't recollect, sir.
Q. Okay. Sure. Is Villanova one of the private school in the Ojai area?
A. Yes. Yes, sir.
Q. For a while, I guess in -- in late '60s, did they have a policy of permitting the kids to smoke on school grounds?
A. I'm not aware of that.
Q. I may break down and show you one.
MR. BOONE: Can we mark it as an exhibit?

00077

MR. BROWN: Well, I need to get it right back. Can you make a copy for me right away?
MR. BOONE: Sure. We can do that right after the deposition.
MR. BROWN: Okay. Let me see if I want to do that.
MR. BOONE: Are you doing okay, Mr. Garst?
THE WITNESS: I'm fine. I'm fine. Thank you.
MR. BROWN: Q. Do you remember, on September 14th, 1976, that the highs were 70s at beaches to upper 70s inland?
A. No, sir.
Q. It was just a test. I won't mark it.
Okay. I guess this is the Ventura Free Press, March 1st '76, and they also had a headline about "Nordhoff Smoking Area Rejected by Trustees."
Was the School Board referred as to the "Trustees"?
A. Yes.
Q. So you remember without any questioning, this debate was there and the School Board said no --
A. Yes.
Q. -- at some point?
A. I don't remember that specific article, however.
Q. Sure.

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A. I remember the situation.
Q. Sure. That's all I am asking about.
Do you remember Legislation in the '70s that was proposed to finance advertising against smoking and it was defeated?
A. I don't remember that, sir.
Q. I don't suppose you have any idea why it might

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have been defeated, would you? We won't ask.
Ojai Valley News, did I ask you questions about that?
A. Yes.
Q. So I covered that.
Is Chaparral High School a private school.
A. It's a continuation school part of Ojai Unified School District.
Q. Did you have any idea about the percentage of the student body at Chaparral that smoked?
A. No, sir.
Q. Well, let's see if I can finish this up.
You don't smoke at all, do you?
A. No, sir.
Q. You never have smoked?
A. I have even tried it.
Q. Okay. You may have found the only other person in the entire state of California that can make that statement,

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I am sitting right over here.
A. The kids had a hard time believing that.
Q. Well, I can tell you, I don't have the slightest idea why. I have no conscious thought about ever having a conscious thought about it.
A. I disliked my folks smoking.
Q. Do you recall in 1973 -- and you don't know if that's -- we don't know by end of the school year -- that is, I don't have that information, but do you recall about that time that there was a recommendation for a health program to be added to the phys. ed. program, and the Nordhoff response was they didn't want to at that time. Do you remember that?
A. No.
Q. Have you talked to Susan Arce about your testimony here today?
A. I stopped in to see if I could get the curriculum from the '60s and '70s to see -- in fact, to refresh in my mind where these things were actually written down.
And she said when the new principal took over, Jack Smith, he gleaned everything out and threw everything away.
Q. Okay. So that was directly because you were going to testify here?
A. I wanted to find out and try to refresh my mind as

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to more specifically yes or no on certain dates, et cetera.
Q. Yes or no, what? I'm not --
A. To -- to the -- the classes, like when did the -- what did -- the GSR class, when did it actually start. And it started in '80, when I did it.
And prior to that time, it was disbursed out. I wanted to make sure it was disbursed out.
Q. You had your dates right?
A. That was my recollection. It was disbursed out. And she couldn't help me, because she said it was gone.
Q. So you didn't confirm your recollection, but that's still your recollection?
A. Yes.
Q. Yeah. Okay. Did you talk to Duane Owens?
A. No, I did not.
Q. I should finish my sentence.
-- about your testimony? And the answer is no, you did not?

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A. No. I haven't seen Duane in a long time.
Q. Would it be accurate to say that students were breaking a rule if they smoked and they were punished for not smoking -- no, strike that. I won't ask that question.
Do you know a Fred Linkenelter?
A. Linkenelt.
Q. L-I-N-K-E-N-E-L-T, is that right?

00081

A. Yes.
Q. Did you talk to him about this subject of this trial?
A. No, sir.
Q. How about Herb Kaiser?
A. Yes, I called Herb.
Q. And he taught driver's ed and GSR in 1973?
A. I believe so.
Q. Did you talk to him about what he taught?
A. Yes. That's what I said earlier this morning. He had driver ed, and the last week and week and a half was sex education.
I asked him if he had the tobacco in that particular unit at that time, and he said he can't recollect that. So at that time it was still disbursed out throughout into the science classes.
Q. So he told you he couldn't remember what he taught?
A. No. He said he didn't teach tobacco and driver ed, plus the week and a half or two the sex education.
Q. In this course we were talking about -- let's get a handle on what the time was of it. Was -- this GSR course we have been talking about, was that a year course or semester course?
A. Now, what time frame are you talking about?

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Q. '72 to '76?
A. I'm not so sure you could call it GSR at that time.
Q. Okay. What would you call it?
A. Not course -- well, it was disbursed out in amongst other courses.
Q. Sure. GSR started in 1980, I believe?
A. Yes. That's when we brought it all together.
Q. Was that a whole year?
A. No. 18 weeks of driver -- nine weeks of driver ed and nine week of the GSR. And then in the next semester we had a new set of young people come in, and we'd do nine weeks of driver ed and nine weeks of GSR.
Q. Did that include about two to three weeks of health education?
A. Probably more because -- are you including first aid as health?
Q. Everything, yeah.
A. Yes. Probably the only part you wouldn't count would be the career part.
Q. You worked -- after you left Nordhoff seven or eight years ago, you did some work for the school district which included working for some outfit that had a name something like, Tobacco Urgency Product Education, or something like that.

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A. I worked for the Unified School District.
Q. Okay.
A. And I kind of coordinated tobacco programs,

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elementary junior high and high school.
Q. You were at least, in part, ordering the tobacco education materials and distributing them out to the schools?
A. Not necessarily ordering materials. We -- we would have a budget. I would tell each school how much money they had for their purchase, and they had the discretion to order what they wished, and then would I get speakers.
I would coordinate the cessation programs and I'd -- I believe in the elementary, we started at the fifth grade.
Q. And this was seven or eight years ago, early '90s, huh?
A. Yes.
Q. Let me ask you this: As Dean of boys, '72-'76, when you caught -- or when you were punishing a boy for smoking, what if anything would you tell him about the health risks of smoking?
MR. BOONE: Let me just object. I believe that misstates testimony. I believe he was Dean of Students for a year in there.

00084

THE WITNESS: First year and a half I was Dean of Students.
MR. BROWN: Q. Okay. Include that time.
A. I had everybody the first year and a half. When Ms. Arce came in, I just had the boys.
Q. Okay. What would you tell the students, boys or girls?
A. I would tell them it wasn't good for them. And on occasion I'd show them that slide, if I had the slide.
Q. Can you recall anything else you told them, any specifics beyond that?
A. No, other than it's a health hazard.
MR. BROWN: Okay. Thank very much. Maybe I'll see you this afternoon.
THE WITNESS: Okay. Most likely.
MR. BOONE: Thanks, Bob.
(Whereupon the deposition was concluded at 11:25 a.m.)

_____ _____
DATE SIGNATURE OF WITNESS

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